

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1191
(Representatives Louser, Kasper, Motschenbacher, Ostlie, D. Ruby)
(Senators Larsen, Paulson, Vedaa)

AN ACT to amend and reenact subsection 2 of section 12-60-24 and sections 49-07-01.1, 51-05.1-01, 51-05.1-01.2, 51-05.1-04.1, and 51-05.1-05 of the North Dakota Century Code, relating to criminal history record checks of licenses, the registration of auctioneers, and cross-references; to repeal sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03 of the North Dakota Century Code, relating to auctioneers' and clerks' licenses; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

2. The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
 - a. The governing body of a city or a county, by ordinance or resolution, for a final applicant for a specified occupation with the city or county.
 - b. The agriculture commissioner for each applicant for a license to grow or process hemp under section 4.1-18.1-02.
 - c. The education standards and practices board for initial, re-entry, and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
 - d. The North Dakota board of medicine for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
 - e. The private investigative and security board for licenses or registrations under section 43-30-06.
 - f. The department of health and human services for foster care licenses, approvals, and identified relatives under chapter 50-11, appointments of legal guardians under chapter 50-11.3, and petitions for adoptions under chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those chapters. A criminal history record investigation completed under chapter 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two chapters.
 - g. The department of health and human services for criminal history record checks authorized under section 50-06-01.9.
 - h. The chief information officer of the information technology department for certain individuals under section 54-59-20.
 - i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the

costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history record check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.

- j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- l. The Bank of North Dakota for a final applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for all employees, final applicants for employment with job service, and contractors with access to federal tax information.
- n. The department of health and human services for a final applicant for a job opening or a current employee with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration as a designated caregiver or a compassion center agent under chapter 19-24.1.
- o. The state board of nursing for applicants, licensees, registrants, or disciplinary investigations under chapter 43-12.1, except that criminal history record checks need not be made unless required by the board.
- p. The state board of pharmacy for applicants or disciplinary investigations under chapter 43-15 and registrations, or revocation or suspension of registrations, under chapter 19-03.1, except that criminal history record checks need not be made unless required by the board.
- q. The state real estate commission for applicants, licensees, or investigations under chapter 43-23, except that criminal history record checks need not be made unless required by the commission.
- r. The North Dakota board of social work examiners for applicants for initial licensure or licensees under chapter 43-41, except that criminal history record checks for licensees need not be made unless required by the board.
- s. All agencies, departments, bureaus, boards, commissions, or institutions of the state, including the North Dakota university system, for all employees or final applicants for employment as a security guard or to otherwise provide security.
- t. The office of management and budget for each individual who has access to personal information as designated by the director.
- u. The department of corrections and rehabilitation for all agents and employees and a final applicant for employment designated by the director and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the department who exercises direct authority over juveniles, inmates, probationers, or parolees.

- v. A city, county, or combination of cities or counties that operates a correctional facility subject to chapter 12-44.1, for each agent and employee and a final applicant for employment of the correctional facility who has direct contact with or exercises direct authority over any juvenile or inmate of the correctional facility, and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the correctional facility who exercises direct authority over juveniles, inmates, probationers, or parolees.
- w. The North Dakota university system for a final applicant for or employee in a specified position in the university system or a university system institution or for each student applying for or admitted to a specified program of study, as designated by the chancellor.
- x.
 - (1) The board of a school district, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
 - (2) The board of a multidistrict special education unit, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
 - (3) The board of an area career and technology center, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
 - (4) The board of a regional education association, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check; and
 - (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for employees designated by the nonpublic or state school, provided the nonpublic or state school is responsible for paying the costs associated with obtaining a criminal history record check.
- y.
 - (1) The board of a school district, for a final applicant seeking employment with the district or otherwise providing services to the district, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
 - (2) The board of a multidistrict special education unit, for a final applicant seeking employment with the unit or otherwise providing services to the unit, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
 - (3) The board of an area career and technology center, for a final applicant seeking employment with the center or otherwise providing services to the center, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
 - (4) The board of a regional education association, for a final applicant seeking employment with the association or otherwise providing services to the association if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check; and
 - (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for a final applicant seeking employment with the school or

otherwise providing services to the school, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check.

- (6) For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal history record check.
- z. The racing commission for applicants for licenses under chapter 53-06.2, except that criminal history record checks need not be made unless required by the commission.
- aa. A district court for a petition to change a name under chapter 32-28.
- bb. The state board of pharmacy for a wholesale drug distributor seeking licensure under chapter 43-15.3.
- cc. The board of dental examiners for investigations of applicants or dentists under section 43-28-11.2, except that criminal history record checks need not be made unless required by the board.
- dd. The department of financial institutions for each applicant for a specified occupation with the department as specified by the commissioner and principal owners and managing officers of applicants for a license from the department of financial institutions.
- ee. The office of tax commissioner for all employees, final applicants for employment with the tax commissioner, and contractors with access to federal tax information.
- ff. The state board of examiners for nursing home administrators for applicants for licensure or licensees under chapter 43-34, except that criminal history record checks for licensees need not be made unless required by the board.
- gg. The marriage and family therapy licensure board for applicants, licensees, or investigations under chapter 43-53, except that criminal history record checks need not be made unless required by the board.
- hh. The state board of chiropractic examiners for applicants, licensees, certificates, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.
 - ii. Workforce safety and insurance for a final applicant for a specified occupation with workforce safety and insurance as designated by the director, or for contractors who may have access to confidential information as designated by the director.
- jj. The board of counselor examiners for applicants for licensure or licensees under chapter 43-47, except that criminal history record checks for licensees need not be made unless required by the board.
- kk. The state board of respiratory care for applicants, licensees, or investigations under chapter 43-42, except that criminal history record checks need not be made unless required by the board.
- ll. The North Dakota real estate appraiser qualifications and ethics board for applicants for permits or registration or permittees, registrants, owners, or controlling persons under chapters 43-23.3 and 43-23.5, except that criminal history record checks for permittees, registrants, owners, or controlling persons need not be made unless required by the board.

- mm. The insurance department for criminal history record checks authorized under chapters 26.1-26 and 26.1-26.8.
- nn. The office of the adjutant general for employees and volunteers working with the recruiting and retention, sexual assault, and youth programs.
- oo. The parks and recreation department for volunteers and final applicants for employment, as determined by the director of the parks and recreation department.
- pp. The North Dakota medical imaging and radiation therapy board of examiners for licensure and licensees under chapter 43-62, except that criminal history record checks for licensees need not be made unless required by the board.
- qq. The game and fish department for volunteers and final applicants for employment, as determined by the director of the game and fish department.
- rr. The North Dakota board of massage for applicants, licensees, or investigations under chapter 43-25.
- ss. The North Dakota board of physical therapy for physical therapist and physical therapist assistant applicants and for licensees under investigation, except that criminal history record checks need not be made unless required by the board.
- tt. The department of commerce for volunteers and employees providing services through eligible organizations, as determined by the commissioner of commerce.
- uu. The state court administrator for a guardian ad litem who provides direct services to youth.
- vv. The department of environmental quality for a final applicant for a job opening or a current employee with the department; an individual being investigated by the department; or, when requested by the department, an applicant for a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08.
- ww. The housing finance agency for criminal history record checks authorized under section 54-17-07.13.
- xx. The office of state treasurer for each individual who has access to federal tax information.
- ~~yy. The public service commission for initial applicant licenses under chapter 51-05.1, except that criminal history record checks need not be made unless required by the public service commission.~~
- ~~zz.~~ The department of health and human services for a criminal history record check for a children's advocacy center as authorized under section 50-25.1-11.1.
- ~~aaa-zz.~~ The state historical society for volunteers and final applicants for employment, except that criminal history record checks need not be made unless requested by the society.
- ~~bbb-aaa.~~ The department of transportation for volunteers and final applicants for employment, as determined by the director of the department of transportation.
- ~~eee-bbb.~~ The commission on legal counsel for indigents for a volunteer or final applicant for employment, as determined by the director of the commission on legal counsel for indigents.
- ~~ddd-ccc.~~ The board of dietetic practice for applications for licensure or renewal under chapter 43-44, except that criminal history record checks need not be made unless required by the board.

~~eee.ddd.~~ The secretary of state for employees with access to personally identifying information of residents or businesses of the state or with access to elections systems that are critical infrastructure under section 44-04-24.

~~fff.eee.~~ The department of health and human services for applicants for initial licensure for emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics, as required by subdivision d of subsection 3 of section 23-27.1-03.

SECTION 2. AMENDMENT. Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty.

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, and 24-09, ~~32-25, and 51-05.1,~~ titles 60 and 64, and title 49 except for chapters 49-22, 49-22.1, and 49-23, in addition to any other penalty provided, is subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

SECTION 3. AMENDMENT. Section 51-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01. Auctioneering or clerking ~~without a license prohibited~~ - Registration.

~~No~~A person may not conduct a sale as an auctioneer or clerk unless licensed ~~by the public service commission~~registered with the secretary of state.

SECTION 4. AMENDMENT. Section 51-05.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01.2. Exemptions.

~~A license~~Registration under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

~~A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.~~

SECTION 5. AMENDMENT. Section 51-05.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-04.1. Written contracts.

An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A

similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. The ~~licensee must~~auctioneer and clerk shall retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales when the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. The ~~licensee's~~auctioneer's or clerk's name, trade or business name, ~~state license number,~~ business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether ~~or not~~ the ~~licensee~~auctioneer or clerk is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. ~~A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and telephone number.~~

SECTION 6. AMENDMENT. Section 51-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-05. Handling of funds by clerk of auction sale.

Every clerk of an auction sale, ~~at all times,~~ shall maintain in the clerk's name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which the clerk immediately shall deposit all funds not the clerk's own, including funds in which the clerk may have some future interest or claim. A federally insured depository located outside the state ~~but licensed as a clerk in this state~~ is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated ~~as such in the licensee's~~in the clerk's depository. A clerk may not commingle the clerk's personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one thousand dollars in ~~such~~the account from the clerk's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with ~~such~~the account, the clerk shall maintain at the clerk's usual place of business books, records, and other documents so that the adequacy of ~~such~~the account may be determined at any time. ~~Trust accounts and other records must be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerk's usual place of business.~~

SECTION 7. REPEAL. Sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03 of the North Dakota Century Code are repealed.

SECTION 8. EFFECTIVE DATE. This Act becomes effective on January 1, 2024.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1191.

House Vote: Yeas 90 Nays 0 Absent 4

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State